

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

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**Microbix Biosystems, Inc.,**

**Plaintiff,**

**v.**

**Novartis Vaccines and Diagnostics, Inc.,**

**Defendant.**

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**Civil Action No. 6:14-CV-3**

**JURY TRIAL DEMANDED**

**COMPLAINT**

Plaintiff Microbix Biosystems, Inc. (“Microbix”), for its Complaint against Defendant Novartis Vaccines and Diagnostics, Inc. (“Novartis”), alleges:

**NATURE OF THE ACTION**

1. This is an action for patent infringement arising under the Patent Laws of the United States, 35 U.S.C. §§ 1 *et seq.*, in particular 35 U.S.C. § 271, involving United States Patent No. 7,270,990 (“the ’990 patent”). This Court has subject matter jurisdiction under 35 U.S.C. § 281, and 28 U.S.C. §§ 1331 and 1338(a).

**THE PARTIES, JURISDICTION AND VENUE**

2. Microbix is a Canadian corporation with its principal place of business in Mississauga, Ontario, Canada.

3. Upon information and belief, Novartis is a Delaware corporation with branches throughout the United States. Novartis’ registered agent is Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808.

4. Novartis is subject to personal jurisdiction in this judicial district because it has conducted business within the State of Texas. Upon information and belief, Novartis, directly or indirectly, has or will, ship, distribute, offer for sale, sell, import, advertise, and/or market its infringing Agriflu product and/or other products throughout the United States, the State of Texas, and the Eastern District of Texas. Upon information and belief, Novartis, has or will, purposefully and voluntarily place its infringing Agriflu product and/or other products in a distribution chain that foreseeably leads to it being sold in this judicial district as part of the ordinary stream of commerce, and with the expectation that its product has been, and will be, offered for sale to and purchased by consumers in this judicial district.

5. Venue is proper in this judicial district under 28 U.S.C. §§ 1400(b) and 1391(b) because, upon information and belief, Novartis, has or will, regularly market its infringing Agriflu product and/or other products in Texas, employ or contract with distributors that regularly seek to sell its infringing Agriflu product and/or other products in Texas, and sell its infringing Agriflu product and/or other products to customers in Texas.

### **FACTS**

6. On September 18, 2007, the United States Patent and Trademark Office duly and lawfully issued U.S. Patent No. 7,270,990 B2, entitled “Virus Production”. A true and correct copy of the ’990 Patent is attached to this Complaint as Exhibit A.

7. Microbix is the owner by assignment of all rights, title and interest in and to the ’990 Patent, including the right to redress all past and present infringements of the patent.

8. The ’990 Patent is in full force and effect, with all necessary fees having been paid.

9. Upon information and belief, Novartis manufactures its Agriflu product in Liverpool, United Kingdom and/or in Siena, Italy using a process patented by the '990 Patent.

10. Upon information and belief, Novartis, has or will, import its Agriflu product and/or other products, all manufactured by the patented process, into the United States, and has or will, offer to sell, sell, or use it within the United States.

### **COUNT I - PATENT INFRINGEMENT**

11. Microbix incorporates paragraphs 1 through 10 as if fully set forth herein.

12. Upon information and belief, in this judicial district and elsewhere in the United States, Novartis, without Microbix's authorization, has been and will be directly infringing one or more claims of the '990 Patent in violation of one or more sub-paragraphs of 35 U.S.C. § 271 by making, using, offering to sell, selling, promoting, instructing others regarding the use of, and/or importing into the United States its Agriflu product and/or other products made on the same platform or using the same process.

13. Upon information and belief, Novartis' infringement of the '990 Patent is willful.

14. This case is exceptional pursuant to 35 U.S.C. § 285.

15. Microbix is entitled to recover damages adequate to compensate Microbix for Novartis' infringement of the '990 Patent, but in no event less than a reasonable royalty.

16. Novartis' infringing acts have damaged Microbix, and unless the Court enjoins those acts, Novartis will continue to cause Microbix irreparable harm for which there is no adequate remedy at law, entitling Microbix to injunctive relief under 35 U.S.C. § 283.

**PRAYER FOR RELIEF**

WHEREFORE, Microbix prays for the following relief:

- A. A judgment that Novartis has infringed one or more claims of the '990 Patent, and that such infringement is willful;
- B. An award to Microbix of compensatory damages;
- C. An award to Microbix of treble damages for Novartis' willful infringement of the '990 Patent;
- D. A finding that this case is exceptional pursuant to 35 U.S.C. § 285;
- E. An award to Microbix of its attorney's fees and costs in connection with this action;
- F. An award to Microbix of pre-judgment and post-judgment interest on its damages;
- G. An injunction barring Novartis and its affiliates, subsidiaries, officers, directors, agents, representatives, servants, employees, licensees, successors, assigns, and attorneys, and those persons in active concert or participation with them, from further infringement of the '990 Patent pursuant to 35 U.S.C. § 283; and
- H. Such other and further relief as the Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Microbix requests trial by jury of all claims and issues so triable under law.

Dated: January 6, 2014.

**Microbix Biosystems, Inc.**

By: /s/ Mark D. Strachan

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